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No. 80-2073

In the

Supreme Court of the United States

OCTOBER TERM, 1980

WILMA D. STEWART, *Petitioner*

v.

MINNESOTA MINING AND MANUFACTURING COMPANY, *Respondent*

Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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June 30, 1981

QUESTION PRESENTED

Whether the Court of Appeals correctly affirmed the District Court's action in granting the summary judgment.

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Respondent MINNESOTA MINING AND MANUFACTURING COMPANY files this its Brief in Opposition to the Wilma D. Stewart Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

RESPONDENT'S STATEMENT OF THE CASE

Petitioner's Statement of the Case is generally accurate. However, Petitioner mischaracterizes the basis upon which Respondent moved for summary judgment in the District Court. The allegations concerning the precise defect or problem with the traffic signal were extremely vague. But the Petitioner's own deposition testimony conclusively established that the accident occurred either because of her own negligent conduct, or that of the other

driver. The summary judgment record in the District Court showed conclusively that, even assuming a fact issue on the question of defect, the traffic light simply could not have been a proximate or producing cause of the occurrence in question. Under those circumstances, no genuine issue of material fact remained for the jury on the question of legal causation, the trial court correctly granted the summary judgment, and the appellate court properly affirmed.

SUMMARY OF ARGUMENT

The decision below does not conflict with other Texas Supreme Court products liability decisions, and represents a proper application of federal procedural rules regarding summary judgment. The courts below correctly applied Texas and federal law to the particular fact situation involved.

ARGUMENT AND AUTHORITIES

THE COURT OF APPEALS CORRECTLY AFFIRMED THE DISTRICT COURT'S ACTION IN GRANTING THE SUMMARY JUDGMENT.

The summary judgment record consisted of the pleadings, the deposition of Petitioner, the affidavit of Officer S. A. Ebsen, the investigating officer, and the affidavit of Perry Pearson, the custodian of maintenance records on the traffic signal. Petitioner filed no controverting affidavits, but merely contested the sufficiency of Respondent's summary judgment proof.

The District Court reviewed the summary judgment proof and correctly found that the legal cause of the accident was either Plaintiff's own conduct in failing to

keep a proper lookout, and proceeding into the intersection when it was unsafe to do so, or the negligent conduct of the other driver who was heading westbound at the time of the accident. *See Mission Pac. Ry. v. Austin American Statesman*, 552 S.W.2d 99 (Tex. 1977); *East Texas Theaters Inc. v. Rutledge*, 453 S.W.2d 446 (Tex. 1970); *Menking v. Bushman Mfg. Co.*, 496 S.W.2d 762 (Tex.Civ.App. — Corpus Christi 1973, no writ).

Respondent acknowledges that summary judgment is rarely appropriate in negligence or products liability cases. *See* 10 C. WRIGHT & A. MILLER, *Federal Practice and Procedure* §2729 (1973). But in those rare situations where the *material* facts are uncontroverted, and only one conclusion can reasonably be drawn by the fact finder, summary judgment is appropriate. *See Flying Diamond Corp. v. Pennaluna & Co.*, 586 F.2d 707 (9th Cir. 1978); *Crumm v. Continental Oil Co.*, 471 F.2d 784 (5th Cir. 1973); *Silow v. Truxmore Ind., Inc.*, 449 F.Supp. 997 (D.Del. 1978); 6 J. MOORE, *Moore's Federal Practice* ¶56.17 [65.-1] (2d ed. 1980).

CONCLUSION

The Court of Appeals properly affirmed the District Court's application of the correct legal standards to the particular fact situation involved here. Neither court rendered a decision in conflict with the decision of another federal court of appeals, or incorrectly applied Texas law to this fact situation. Under those circumstances, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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